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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,966	12/01/2003	Lee J. Brown	1612	3032

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ALFRED J MANGELS
4729 CORNELL ROAD
CINCINNATI, OH 452412433

EXAMINER

GRAYSAY, TAMARA L

ART UNIT PAPER NUMBER

3636

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/724,966

Applicant(s)

BROWN, LEE J.

Examiner

Tamara L. Graysay

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-16 and 18 is/are rejected.
- 7) ☒ Claim(s) 3 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 12 June 2006. These drawings are accepted, subject to the objection noted below.

2. The drawings are objected to because of the following:

- FIG. 5: Reference character 104 is not mentioned in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

- The particular range of support means inclination angle, as recited in claim 6, is not mentioned in the specification.
- The particular support means inclination angle, as recited in claim 7, is not mentioned in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 5, 8-16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Schoenherr (US-5570860).

Claim 1: Schoenherr discloses a support bracket (10) comprising: a substantially L-shaped body including a first leg (clip 24) that extends vertically, and a second leg (portion 12) that extends horizontally when installed, the first leg including a mounting surface adapted to contact a rear wall of the gutter (the bracket contacts rear wall 16a, FIG. 2); at least one first bore (aperture 26) for securing the bracket to a building surface; at least one second bore for receiving a cover fastener (4:21-24; apertures holes 40a, 40b, FIG. 1, are for connecting a diverse element to the bracket thus meeting the functional limitation of the claimed bore); engagement means (nose 28) carried by the second leg for engaging a front wall of the gutter (FIG. 1); and support means (top of clip 24) for engaging an element above the bracket. Insofar as the clip 24 of Shcoenherr is the same structure as disclosed in applicant's bracket, i.e., a rounded top portion of the bracket first leg, the functional intent of the claim has been met.

Claim 2: The Schoenherr first leg (clip 24) includes two first bores (one on each leg of the clip).

Claim 4: The Schoenherr engagement means (nose 28) is a hook member adapted to engage a reentrant lip of a gutter.

Claim 5: The Schoenherr support means (top of clip 24) is inclined in a downward direction from a plane defined by the mounting surface and extending toward the engagement means, i.e., the top of clip 24 is curved.

Claim 8: The Schoenherr second leg (portion 12) includes a stop surface (sidewalls 25) for abutment with elements located above the bracket.

Claim 9: The Schoenherr stop surface (sidewall 25) extends below the bore (note FIG. 2 that depicts the sidewall 25 extending below the bore in the rib portion).

Claim 10: The Schoenherr bracket includes at least one bracket body aperture (aperture created by 20, 30, 32; and aperture created by 30a, 30, 34).

Claim 11: The Schoenherr aperture is positioned in the first leg insofar as the aperture created by 30a, 30, 34 is below the first leg.

Claim 12: The Schoenherr aperture is positioned in the second leg insofar as the aperture created by 20, 30, 32 is below the second leg.

Claim 13: One Schoenherr aperture is positioned in the first leg insofar as the aperture created by 30a, 30, 34 is below the first leg and the other Schoenherr aperture is positioned in the second leg insofar as the aperture created by 20, 30, 32 is below the second leg.

Claim 14: Schoenherr discloses a support bracket (10) comprising: a substantially L-shaped body including a first leg (clip 24) that extends vertically, and a second leg (portion 12) fixedly connected with the first leg, the second leg extends horizontally

when installed, the first leg including a mounting surface adapted to contact a rear wall of the gutter (the bracket contacts rear wall 16a, FIG. 2); at least one first bore (aperture 26) for securing the bracket to a building surface; at least one second bore for receiving a cover fastener (4:21-24; apertures holes 40a, 40b, FIG. 1, are for connecting a diverse element to the bracket thus meeting the functional limitation of the claimed bore); engagement means (nose 28) carried by the second leg for engaging a front wall of the gutter (FIG. 1); and support means (top of clip 24) for engaging an element above the bracket. Insofar as the clip 24 of Schoenherr is the same structure as disclosed in applicant's bracket, i.e., a rounded top portion of the bracket first leg, the functional intent of the claim has been met.

Claim 15: Schoenherr discloses a support bracket (10) comprising: a substantially L-shaped body including a first leg (clip 24) that extends vertically, and a second leg (portion 12) that extends horizontally when installed, the first leg including a mounting surface adapted to contact a rear wall of the gutter (the bracket contacts rear wall 16a, FIG. 2); at least one first bore (aperture 26) for securing the bracket to a building surface; engagement means (nose 28) carried by the second leg for engaging a front wall of the gutter (FIG. 1); a contact surface (the top of sidewall 25) for contacting an element above the bracket; and support means (top of clip 24) for engaging an element above the bracket. Insofar as the clip 24 of Schoenherr is the same structure as disclosed in applicant's bracket, i.e., a rounded top portion of the bracket first leg, the functional intent of the claim has been met.

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Claim 16: The Schoenherr bracket includes at least one second bore for receiving a cover fastener (4:21-24; apertures holes 40a, 40b, FIG. 1, are for connecting a diverse element to the bracket thus meeting the functional limitation of the claimed bore).

Claim 18: The Schoenherr second leg (portion 12) includes a stop surface (ribs 22) for engagement with elements located above the bracket.

5. Claims 1, 2, 4, 5 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sasamoto (JP-2000-17797).

Claim 1: Sasamoto discloses a support bracket (7, 8; FIG. 2a) comprising: a substantially L-shaped body including a first leg (the portions 6, 5, 4, 10, 11, 12) that extends vertically, and a second leg (portions 7, 8, 9) that extends horizontally when installed, the first leg including a mounting surface adapted to contact a rear wall of the gutter (the portion 12 contacts rear wall of gutter 23, FIG. 1); at least one first bore (apertures that receive fasteners 24) for securing the bracket to a building surface; at least one second bore for receiving a cover fastener (aperture hole 14 for example, FIG. 1, 2a, are for connecting a cover 27 to the bracket thus meeting the functional limitation of the claimed bore); engagement means (portion 9) carried by the second leg for engaging a front wall of the gutter (FIG. 1); and support means (6, 5, 10, 11) for engaging an element above the bracket.

Claim 2: The Sasamoto first leg includes at least two bores (two fasteners 24 are extended through two bores in portion 4; FIG. 1).

Claim 4: The Sasamoto engagement means (portion 9) is a hook member adapted to engage a reentrant lip of a gutter.

Claim 5: The Sasamoto support means (portion 6, 10) is inclined in a downward direction from a plane defined by the mounting surface and extending toward the engagement means.

Claim 14: Sasamoto discloses a support bracket (7, 8; FIG. 2a) comprising: a substantially L-shaped body including a first leg (the portions 6, 5, 4, 10, 11, 12) that extends vertically, and a second leg (portions 7, 8, 9) fixedly connected to the first leg, the second leg extends horizontally when installed, the first leg including a mounting surface adapted to contact a rear wall of the gutter (the portion 12 contacts rear wall of gutter 23, FIG. 1); at least one first bore (apertures that receive fasteners 24) for securing the bracket to a building surface; at least one second bore for receiving a cover fastener (aperture hole 14 for example, FIG. 1, 2a, are for connecting a cover 27 to the bracket thus meeting the functional limitation of the claimed bore); engagement means (portion 9) carried by the second leg for engaging a front wall of the gutter (FIG. 1); and support means (6, 5, 10, 11) for engaging an element above the bracket.

Claim 15: Sasamoto discloses a support bracket (7, 8; FIG. 2a) comprising: a substantially L-shaped body including a first leg (the portions 6, 5, 4, 10, 11, 12) that extends vertically, and a second leg (portions 7, 8, 9) that extends horizontally when installed, the first leg including a mounting surface adapted to contact a rear wall of the gutter (the portion 12 contacts rear wall of gutter 23, FIG. 1); at least one first bore (apertures that receive fasteners 24) for securing the bracket to a building surface;

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engagement means (portion 9) carried by the second leg for engaging a front wall of the gutter (FIG. 1); and support means (6, 5, 10, 11) for engaging an element above the bracket.

Claim 16: The Sasamoto bracket includes at least one second bore for receiving a cover fastener (aperture hole 14 for example, FIG. 1, 2a, are for connecting a cover 27 to the bracket thus meeting the functional limitation of the claimed bore).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasamoto (JP-2000-17797).

Claims 6 and 7: Sasamoto is silent as to the particular inclination angle of the support means (portion 6, 10). However, it is well settled that the particular size or shape of an element is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed element was significant. In the present case, the claimed inclination angle or range is a matter of design choice depending on the particular shape of the gutter cover and sloping an element away from the building was known to one of ordinary skill in the art in order to utilize gravity to better direct rainwater and debris away from the fascia board.

Applicant has provided no persuasive evidence that the particular inclination angle was significant. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the angle of 90 degrees to be 60-85 degrees, or 75 degrees, in order to slope away from the building and utilize gravity to better direct rainwater and debris away from the fascia board.

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Allowable Subject Matter

7. Claims 3 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 2, 4-16 and 18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

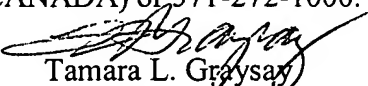
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Albracht (US-6701674) teaches an inclined support means for engaging a gutter cover.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is 571-272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo, can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Tamara L. Graysay
Examiner
Art Unit 3636

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